

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rhodell Post Office
(Rhodell, West Virginia)

Docket No. A2012-8

REPLY COMMENTS OF THE PUBLIC REPRESENTATIVE

(December 15, 2011)

I. INTRODUCTION AND BACKGROUND

On October 6, 2011, the Commission docketed the petition for review of the closing of the Rhodell Post Office.¹ On October 13, 2011, the Commission issued Order No. 901 instituting the current review proceedings, appointed a Public Representative, and established a procedural schedule.² Thereafter, on October 21, 2011, the Postal Service filed an electronic version of the administrative record (AR) concerning its Final Determination, Postal Service Docket Number 1379175-25915.³

Two additional letters were received requesting reconsideration of the Rhodell Post Office closure – one from Carl Vass on October 13, 2011, and one from Pat Farruggia on October 19, 2011. None of the participants filed a Form 61. Each of the three participants stated their objections to the closure of the Rhodell West Virginia Post

¹ Letter filed by Alvin Lambert Jr. of Rhodell, West Virginia (Petitioner).

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 14, 2011, (Order No. 905).

³ Rhodell West Virginia Administrative Record, October 21, 2011, (AR).

Office. The Postal Service filed comments supporting its closure determination on November 30, 2011.⁴

II. STATEMENT OF FACTS

The Rhodell Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office in Rhodell, West Virginia, located in Raleigh County. AR, Item No. 1 at 1. The Rhodell Post Office provides service to 107 post office box customers, 52 highway contract route (HCR) customers (*Id.*), and handles an average of 14.0 daily window transactions, which averaged a daily retail workload of 12.9 minutes. *Id.*, Item No. 11 at 1.

On February 7, 2011, Mr. William Akers, manager, Post Office Operations requested permission to investigate the possible closure of the West Virginia Rhodell Post Office. AR, Item No. 1, at 1. The request was granted. *Id.*

On March 21, 2011, the Postal Service notified Rhodell Post Office customers of a possible change in how their postal services would be provided. AR, Item No. 21 at 1. As described in the notice, customers were given the option of receiving delivery and retail services by HCR service under the administrative responsibility of the Stephenson Post Office, located three miles away. AR, Item No. 21 at 1. Questionnaires were addressed to customers of the Rhodell Post Office and were to be completed and returned by April 13, 2011. *Id.* In addition, customers were invited to attend a public meeting on April 13, 2011, where Postal Service representatives would answer questions and provide information about postal services. *Id.* Of the 175 questionnaires distributed by the Postal Service, 67 were completed and returned; three responded favorably to the proposal; 21 expressed either opposition or concern; and 43 expressed no opinion. AR, Item No. 33 at 2. The meeting was held on April 13, 2011, as scheduled with 51 customers in attendance. *Id.*

⁴ United States Postal Service Comments Regarding Appeal, November 30, 2011 (Postal Service Comments).

On June 8, 2011, a formal proposal to close the Rhodell Post Office was forwarded to that post office and posted for sixty days. *Id.*, Item No. 40 at 1. An invitation to file comments was also posted in the Stephenson Post Office. *Id.*, Item No. 32 at 1. No comments were received, during the posting period that ended August 9, 2011. *Id.*, Item No. 40 at 1.

The Vice President for Delivery and Post Office Operations approved the request to discontinue the Rhodell Post Office on August 30, 2011. *Id.*, Item No. 51 at 1. The decision was based upon the: (1) postmaster's retirement on January 01, 2010; (2) workload and revenue decline; (3) close proximity of the Stephenson post office; and (4) delivery services provided via a highway contract route delivery. *Id.*, Item No. 1 at 1. The Final Determination did consider and respond to various concerns expressed by postal customers at the April 13, 2011 public meeting. *Id.*, Item No. 33 at 2 – 5.

III. POSITIONS OF THE PARTIES

A. The Petitioners

In letters, the Petitioners present five arguments in opposition to the closing of the Rhodell Post Office: (1) inconvenience to elderly citizens who cannot travel to another Post Office to transact business; (2) the economic savings projected by the Postal Service does not recognize that the Rhodell Post Office building is paid for and thus the rental fee is erroneous; (3) the office is large enough to be expanded; (4) the Rhodell Post Office has been in existence since 1917;⁵ and (5) both the Stephenson and the Josephine Post Offices are being considered for closure.⁶ Petitions for review by Alvin Lambert, Jr., October 6, 2011, Pat Farruggia, October 18, 2011, and Carl Vass, October 2, 2011.

⁵ The Rhodell Post Office is not listed as having historical significance. USPS Comments Regarding Appeal, November 30, 2011 at 8. See *also* AR, Item No. 16 at 1.

⁶ The Public Representative confirmed the information by calling the Rhodell Post Office on November 28, 2011. The postal employee indicated that both the Stephenson and Josephine Post Offices have held community meetings regarding the possible closure of each post office.

B. The Postal Service

On November 30, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 905. In that filing, the Postal Service supports its decision to close the Rhodell Post Office on the basis that the Postal Service: (1) gave adequate consideration to the closure of the Rhodell Post Office; (2) considered the economic savings that would result from closing the Rhodell Post Office; and (3) has followed proper procedures. Postal Service Comments. Also, the Postal Service says that there has been no final decision to close the Stephenson Post Office. *Id.* The Postal Service argues that if the Stephenson Post Office is closed at a future date, the “customers of the Rhodell Post Office would have an opportunity to comment on that closing before a final determination would be made.” *Id.*

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.⁷

⁷ Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. The petitioners in this proceeding did not request suspension of the closure of the Rhodell Post Office. Petitions, October 6, 13, and 19, 2011.

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's Final Determination must be in writing, address the aforementioned considerations and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its Final Determination is made available. 39 U.S.C. § 404(d)(4).

V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review, of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by the Petitioners and the Postal Service, the Public Representative concludes that the Postal Service has not provided sufficient consideration of the effect the closure will have on postal patrons. The decision to close the Rhodell Post Office is "arbitrary and capricious," and fails to provide a maximum degree of effective and regular postal service to rural areas and communities.

The Postal Service has not appropriately considered the "Effect of the Closing on the Community Served." In his petition, Petitioner Lambert indicates that internet and telephone access is unavailable.⁸ If customers do not subscribe to or are unable to

⁸ However, the Public Representative called the Rhodell Post Office in West Virginia and was told that there is telephone and internet service in the community. The Public Representative was unable to locate a telephone number for the other two petitioners.

receive telephone and/or internet service in some areas, the Postal Service's argument that a customer can obtain government forms by contacting local government agencies effectively means customers must rely solely on the Postal Service to interact with government and other agencies.

The Postal Service states that the Stephenson West Virginia Post Office will become the administrative office for Rhodell Post Office customers. As mentioned above, information indicates that the Stephenson Post Office is under consideration for closure.⁹ In addition, another nearby post office, Josephine Post Office, is being considered for closure. Yet, the Postal Services' position is that Rhodell customers may, at some future date, comment on that closing before a final determination would be made."¹⁰ This poses a significant issue the Commission may want to address because it undermines the basic premise of the proximate access the Postal Service is touting to the Rhodell Post Office customers. The following map shows the Rhodell, Stephenson, Josephine Post Office and other post offices in close proximity. Note that several of the surrounding post offices including the Stephenson and Josephine Post Offices are among those slated for closure via the Retail Access Optimization Initiative (RAOI). In addition, the nearby Amigo Main Post Office was closed.¹¹ From the map and satellite images, the terrain surrounding the Rhodell, Stephenson and Josephine Post Offices is mountainous and the roads within a 10 mile driving distance are limited. If the RAOI candidates are eventually closed, Rhodell Post Office customers will have limited access to a postal facility. The Postal Service's position that "Rhodell customers" can always comment on the closure of the Stephenson Post Office as a response to what will happen if the Rhodell Post Office is closed is non-responsive and disingenuous. The Postal Service needs to develop a plan for maintaining adequate

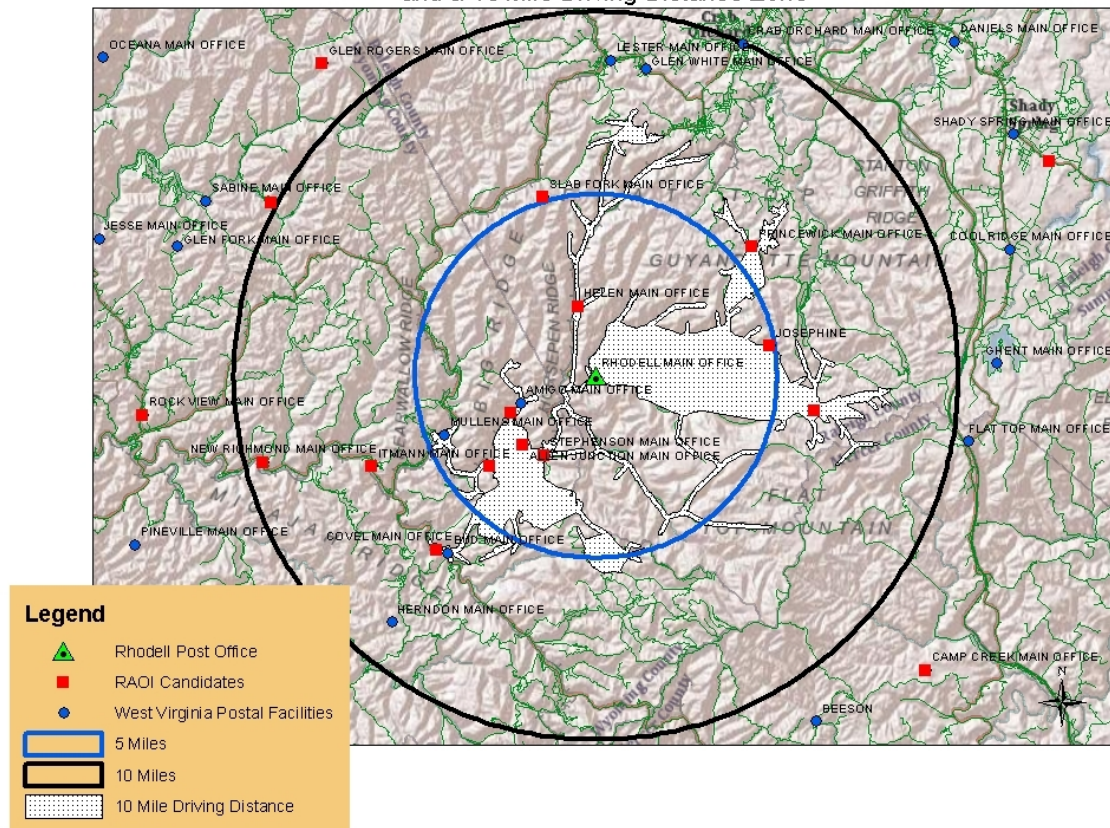
⁹ Both the Stephenson and the Josephine Post Offices were among those considered in the Retail Access Optimization Initiative (RAOI).

¹⁰ USPS Comments Regarding Appeal, November 30, 2011, at 3 FN 3.

¹¹ See, <http://bdtonline.com/editorials/x57160379/Looming-closures-Postal-moratorium-should-be-adopted>.

postal services to areas that may have limited alternative means of communicating with others outside of the local community.

**Rhodell Post Office - 5 and 10 Mile Buffers - Surrounding RAOI Candidate Facilities
and a 10 Mile Driving Distance Zone**



VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Rhodell Post Office should be remanded.

Respectfully Submitted,

/s/
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